

By: Ellis

S.B. No. 152

A BILL TO BE ENTITLED

AN ACT

relating to the standard of proof in health care liability claims involving emergency care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.153, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful or ~~and~~ wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

(b) The standard of proof in Subsection (a) does not apply to claims against any individual or entity described or covered by Section 74.151(b) or (e) who is regularly in the business of

1 providing emergency medical care.

2 SECTION 2. The change in law made by this Act applies only
3 to a cause of action that accrues on or after the effective date of
4 this Act. A cause of action that accrues before the effective date
5 of this Act is governed by the law in effect immediately before that
6 date, and that law is continued in effect for that purpose.

7 SECTION 3. This Act takes effect September 1, 2009.